

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEREK MATTHEWS,

Plaintiff,

v.

EDMUND G. BROWN, et al.,

Defendants.

No. 2:20-cv-2515 JAM DB P

ORDER

Plaintiff, a state prisoner, proceeds pro se with this civil rights action under 42 U.S.C. § 1983. Plaintiff initiated this action in the United States District Court for the Northern District of California and the case was subsequently transferred to this court. This case proceeds on plaintiff's second amended complaint filed on December 23, 2019.

Defendants have filed two separate motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). (ECF Nos. 58, 77.) Plaintiff has opposed both motions. (ECF Nos. 79, 94.)

Defendants Walker, Jackson, Huff, Sysonbath and Tout have moved to dismiss plaintiff's latter-filed opposition, ECF No. 94, as an unauthorized sur-reply. (ECF No. 97.) Defendants note the filing was directed to "the Defendants in the above entitled case and number" and was filed subsequent to their reply at ECF No. 82. Plaintiff has requested a 60-day extension of time to respond to the motion to strike and additionally requests clarification of the motion to strike. (ECF No. 98.)

1 Defendants' motion to strike and plaintiff's motion for extension of time to respond are  
2 before the court. Defendants' pending motions to dismiss will be addressed at a later date.

3 Plaintiff's filing at ECF No. 94 was docketed as an opposition to the motion to dismiss  
4 filed by defendant Pinchback at ECF No. 77. The motion to dismiss filed by defendants Walker,  
5 Jackson, Huff, Sysonbath and Tout, in contrast, is pending at ECF No. 58. The court construes  
6 plaintiff's filing docketed at ECF No. 94 as a timely-filed opposition to the motion to dismiss  
7 separately filed by defendant Pinchback. So construed, the filing at issue is not an unauthorized  
8 sur-reply.

9 For the foregoing reasons, IT IS HEREBY ORDERED:

- 10 1. Defendants' motion to strike (ECF No. 97) is denied; and
- 11 2. Plaintiff's motion for clarification and for an extension of time (ECF No. 98) is denied  
12 as unnecessary.

13 Dated: April 14, 2021

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16 DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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